IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ram Niwas. Versus State of Rajasthan.

S.B. Criminal Revision Petition No. 516/2006
against the order dated 5-6-2006 passed by
the Special Judge, NDPS Act Cases, Jodhpur,
in Sessions Case No.62/2006.

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Date of Order: August 03, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. G.M. Khan, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal revision under Section 397/401 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 5-6-2006 passed by the Special Judge, NDPS Act Cases, Jodhpur (for short, "the trial Court" hereinafter) in Sessions Case No. 62/2006, whereby th trial Court framed charges against the petitioner for the offence under Section 8/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act" hereinafter) and against co-accused Jagdish for the offence under Section 8/15 of the Act.

I have heard learned counsel for the petitioner and

the Public Prosecutor. Carefully gone through the order impugned.

Learned counsel for the petitioner has relied on the decisions of the Hon'ble Supreme Court in Satish Mehra Vs. Delhi Administration, 1996 (3) Crimes 85 (SC); Dilawar Balu Kurane Vs. State of Maharashtra, RLW 2002 (1) SC 157; and a decision of this Court in Puran Mal Vs. State of Rajasthan, 2006 (2) RLW 1052, and contended that there is absolutely no chance of conviction of the petitioner for the charge framed against him and, therefore, the impugned order framing the charge deserves to be set aside.

Learned Public Prosecutor supports the order impugned and contended that the petitioner is the owner of the truck which was found transporting 4 quintals and 34 kgs of contraband poppy straw in 18 bags and the quantity of poppy straw transported in the truck of the petitioner is a commercial quantity.

During the investigation, the police collected the evidence that the said contraband poppy straw weighing 4 quintals and 34 kgs was transported in the truck of the petitioner and the petitioner knowing it that the said truck is going to be used as a conveyance for transporting the huge quantity of contraband poppy straw, permitted the truck to be used as a conveyance to carry the contraband poppy straw and the plea of

the petitioner that the said truck was used as conveyance for carrying the contraband poppy straw without his knowledge, has to be established by the evidence and the burden is on the accused-petitioner to establish that the said truck was used as conveyance for transporting the contraband poppy straw without his knowledge or connivance and in the circumstances, therefore, at the stage of framing the charge, the defence of the issued cannot be considered.

In State of Orissa Vs. Debendra Nath Padhi, JT 2004 (10) SC 303, a Three Judge Bench of the Hon'ble Supreme Court held that at the time of framing the charge or taking the cognizance, the accused has no right to produce any material. The Hon'ble Apex Court further held that the only right the accused has at that stage is of being heard and nothing beyond it. The Apex Court further held as under:-

> "At the stage of framing the charge roving and fishing inquiry is impermissible. It is well-settled that at the stage of framing the charge, the defence of the accused cannot be put forth. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police."

In the Three Judge Bench decision of the Hon'ble Supreme Court in State of Orissa Vs. Debendra Nath Padhi

(supra) held that the case in Satish Mehra's case holding that the trial Court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code, has not been correctly decided. Therefore, so far as the judgments relied on by the learned counsel for the petitioner are concerned, they are of no help to the petitioner as they turn on their own facts.

In this view of the matter, I do not find any error, illegality or perversity in the order impugned.

The criminal revision petition is, therefore, dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs